Decree supports flow rights

By JOSEPHINE ZIMMERMAN
Herald Staff Writer

Robert Fillerup, Orem attorney who has handled many water cases and who represents a number of canal companies that use Provo River water, believes the Bureau of Reclamation has made a mistake in going after "storage rights" for Jordanelle Reservoir on the upper Provo River.

"I told them they had been talking to the wrong people. They should have gone after flow rights," Fillerup said.

He pointed out that Provo and many of the canal companies have Class A rights on the river.

"The Morse Decree set forth certain Class A rights for canal companies and individuals. Some of those rights have changed hands, but the basic, older canal companies that were chartered by the Territorial Legislature still exist," he said. "There have been a few minor changes, but nothing significant.

"Those rights were flow rights, and they vary depending on the time of the year. Roughly the canal companies have the rights to 160 second feet of flow."

He said the Bureau of Reclamation, The Central Utah Water Conservancy District and the Salt Lake County water users have all claimed that the Class A right holders have no flow rights in the wintertime, since those are irrigation rights.

Fillerup said "the Morse Decree does not specify a particular irrigation season. Paragraph 124 of the decree says, in essence that if a water right is an irrigation right, then the irrigators are entitled to use in the only so much as is necessary for domestic and culinary purposes. In other words, it must be put to beneficial use.

A copy of the Morse Decree.

However, the Utah Supreme Court held in one decision that the 2.52 second feet flow rights Provo City acquired from Caleb Tanner were not subject to Paragraph 124."

Utah water law holds that water rights can be lost if they are not put to beneficial use, and Bureau of Reclamation spokesmen have declared that they can acquire any downstream water rights that are not being used beneficially.

The Utah Supreme Court, in deciding the Provo case which Fillerup argued before the court, held otherwise.

"Nobody wants to see water wasted, but by same token we can't have big brother come in and say 'this is my water,' and that is exactly what is happening here," Fillerup said.

Another case, the 40-year-old Anderson case, pending in the 3rd District Court in Salt Lake City has been held up awaiting a general adjudication of Provo River.

Fillerup said a municipality, under the state constitution and state law, cannot divest itself of its water rights, but he said those rights could be lost "by default or acquiescence."

The canal companies have no intention of losing their rights. They have filed a petition in the Anderson case and will vigorously defend their rights under the Morse Decree, Fillerup said.

"The Anderson case has been pending 40 years and it could go on another 50 years, since the state engineer is required to do surveys and then determine who lays claim to the water.

He said some work has been done on the Spanish Fork and Payson rivers, and a piece of the Provo River at Wallsburg, and that the state engineer has sent out notices for claimants to file claims.

"They are marching toward that goal, but it's going to take time."

County creates parkway committee

19 Mar 1989

By SONNI SCHWINN
Heber City Correspondent

HEBER CITY — The Wasatch County Commission has appointed Chairman Moroni Besendorfer to chair and organize a Provo River Parkway Citizens Committee, to negotiate with the Bureau of Reclamation as the parkway is developed, and be the spokesperson for the committee.

He said he would draw the committee members from among the 50 property owners along the river, between Jordanelle and Deer Creek Reservoirs.

In recommending that a committee be formed, Besendorfer said, "We need a committee spokesman because (the Bureau) is going to come in here and weed away from certain groups until, eventually, they destroy us all, when it comes to that parkway...If they come in and start to negotiate with any of the property owners, then, instead of negotiating with one, they're going to negotiate with everybody.

"If one is approached for a sale of property, then everybody would be notified and we'd discuss it as a whole group, rather than just an individual. This way we'll be pulling together for the common purpose of all property owners instead of just one here and there."

Besendorfer owns property on both sides of the river.

About two years ago discussions about the parkway plans, between the Bureau and the property owners, became heated and finally ended when they couldn't agree to terms.

The Bureau proposes that the landowners voluntarily allow access to fishermen, along their riverfront properties, with access points that would provide parking and bathroom facilities. However, Bureau representatives said there was no money for management and no state agencies would assume the responsibility because of their own budget problems.

The landowners adamantly refused to allow the access without assurance that law enforcement and maintenance, particularly garbage collection and cleanup, would be provided.

The Bureau said if landowners don't cooperate voluntarily, it will condemn the needed property. Some of the landowners pointed out that might be a good idea because they would then get some compensation from the Bureau for giving up their property rights.

Besendorfer said one issue the committee would decide would be whether to voluntarily allow fishermen on their property or negotiate for compensation.

Upper part of river too low for any fishing

3-23-89

By ROD COLLETT
Associate Sports Editor

Some people are unfamiliar with the regulations or simply can't wait for the official re-opening of the Provo River for fishing between the Olmstead Diversion and Deer Creek Dam.

Low flows on that stretch of river, considered by many fly angling aficionados as a blue ribbon trout fishery, led to its closure last fall.

But what this means to the reproducing brown trout, fish numbers and the crucial habitat won't be known for a few weeks.

Beginning April 10th, the Division of Wildlife Resources will begin a creel census of the upper stretch.

"I don't think we'll know the status of the habitat or the fishery until some time in the future," said Charlie Thompson, fisheries biologist for the DWR.

"We'll do some population estimates on the river and be able to see the health of the stream then. It may be several years before we'll be able to see a decline in the fishery, if any, from low waters, because that area is dominated by adult fish. If these mature fish disappeared suddenly, then you might see a quick drop in the quality of the fishery."

The river study is expected to take the whole week. The DWR personnel will man five stations; Bridal Veil, mouth of the canyon, Squaw Peak turnoff, Vivian Park and the old railroad trestle.

Working quarter-mile stretches at a time, fish and game officers will shock the fish. The study will determine general condition of trout, numbers, weight, numbers per quarter mile and number of pounds of fish per quarter mile.

Meanwhile, despite newspaper and television reports and posted signs, Thompson says some people are still breaking the law by fishing above Olmstead.

"We are writing citations to those who are fishing in the wrong area," Thompson said. "People are getting anxious to go fishing, but there's a lot of river and they don't have to fish that upper section.

"The state has not set a date for the reopening. We are still waiting for a bit more runoff to increase the river flow.

"I don't think we'll wait until Memorial Day, but more likely the first week of April. We thought Little Deer Creek would have increased its flow by now. As soon as the ice is fully off the lake it should warm things up a bit."

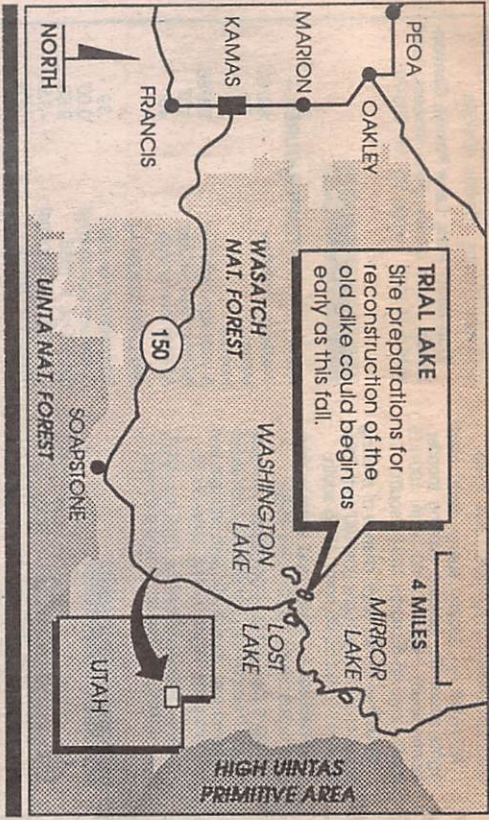
Rebuilding of dike may start in fall

By Marjorie Cortez 7-18-89
Deseret News staff writer

VERNAL — Site preparation for reconstruction of the failed Trial Lake dike, near Mirror Lake in the Uintas, could begin as early as this fall.

Directors of the Central Utah Water Conservancy District have voted to advertise and retain an engineering firm to design and develop specifications for the dike. The directors, at a meeting last week, also gave the district permission to advertise for bids on the excavation and site preparation job.

Don Christiansen, CUP general manager, said he will ask the board in September to award the bid for site preparation.

An earthen dike along the east of Trial Lake reservoir, which historically held 1,600 acre-feet of water, failed in 1985, after the base of the dike eroded — possibly from rodents burrowing into its foundation.

It is one of 15 reservoirs to be upgraded in conjunction with the construction of the Jordanelle Dam and reservoir, according to a U.S. Bureau of Reclamation proposal.

CUP's chief engineer Sheldon Talbot said the rehabilitation project should cost about $350,000. CUP will pay for the project until bureau money is available in 1992 and 1993.

Christiansen said the project may end up costing more than $350,000 because CUP will not sacrifice safety in favor of a less expensive structure.

"If we were to do anything to shortcut this and there were a fail-

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ure, we would have no way to explain it," he said.

Geologic and design studies have concluded that the dam and dike could be safely reconstructed at the site. A state dam safety representative has recommended that the failed dike be removed, the material stockpiled, and the dike rebuilt using most of the same material.

Comments Needed on Treatment of Cutthroat Lake *in Upper Provo River Drainage*

8-9-89

The Utah Department of Wildlife Resources has proposed treatment for Cutthroat Lake. This lake, three miles west of Trial Lake, contains numerous small brook trout. The proposed treatment would chemically remove the existing fish with Rotenone. The lake could then be restocked with either native cutthroat or with golden trout. The treatment is planned for September, 1989.

The Kamas Ranger District is preparing an environmental analysis of this proposed project, and if you have any comments or would like additional information, you may contact Sam Warren, District Ranger, Kamas, UT 84036. To be most effective, your comments should be received by Aug. 31, 1989.